



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



ALEXIS MARIE DIAZ v. HON. DEBORAH BERNINI, et al.,
CR-18-0250-PR

PARTIES:

Petitioner: Alexis Marie Diaz.
Respondent/Cross-Petitioner: State of Arizona, real party in interest.
Amici curiae: Arizona Attorneys for Criminal Justice.

FACTS:

Alexis Marie Diaz was arrested and subsequently charged with driving under the influence (DUI). Upon her arrest, the investigating officer read Diaz this “admonition”:

Arizona law states that a person who operates a motor vehicle at any time in this state gives consent to a test or tests of blood, breath, urine or other bodily substances for the purpose of determining alcohol concentration or drug content. The law enforcement officer is authorized to request more than one test and may choose the types of tests.

If the test results are not available, or indicate an alcohol concentration of 0.08 or above ... then your Arizona driving privilege will be suspended for not less than 90 consecutive days.

If you refuse, or do not expressly agree to submit to, or do not successfully complete the tests, your Arizona driving privilege will be suspended. The suspension will be requested for 12 months, or for two years if you’ve had a prior implied-consent refusal within the last 84 months.

Will you submit to the tests?

Diaz agreed and submitted to breath testing to determine her blood alcohol concentration (BAC).

Before trial, Diaz moved to suppress the BAC test results, arguing that her consent was involuntary under the Fourth Amendment. She relied on recent Arizona Supreme Court authority, *State v. Valenzuela*, 239 Ariz. 299 (2016) (“*Valenzuela I*”). In *Valenzuela II*, the Court examined an admonition formerly used by law enforcement that included a statement that “Arizona law requires” a driver arrested for DUI to give consent to tests chosen by law enforcement. The *Valenzuela II* Court held that the admonition containing the “Arizona law requires” language coerced DUI suspects into giving their consent to testing. The Court concluded that because such consent was not given voluntarily, results of chemical tests quantifying a driver’s BAC cannot be admitted in evidence in a DUI prosecution.

The State responded in Diaz’s case that the search incident to arrest exception to the

warrant requirement applies to breath tests conducted pursuant to a lawful DUI arrest, and therefore voluntary consent is not required. Alternatively, the State argued that (1) the admonition read to Diaz was not coercive, so her consent was truly voluntary, or (2) the good-faith exception to the exclusionary rule applied.

The trial court granted Diaz's motion to suppress. It held that the admonition read to Diaz still was coercive, and the State did not establish that the arresting officer acted in good faith.

The State appealed the ruling to superior court. The superior court agreed that Diaz's consent was involuntary but concluded that the good-faith exception applied. The superior court determined that the application of the good-faith exception was controlled by *Valenzuela II*. It said to reject its application the trial court would have to have made a finding that the admonition was given by the officer deliberately, recklessly, or with gross negligence as opposed to an objectively reasonable good-faith belief that the admonition was lawful.

Diaz filed a petition for special action. The court of appeals accepted special action jurisdiction, noting that the parties made the same arguments that they made below.

The court of appeals made several key rulings:

1. In Arizona, the Fourth Amendment does not require suppression of breath test results obtained without voluntary consent because a warrantless breath test is allowed as a search incident to a lawful DUI arrest. *State v. Navarro*, 241 Ariz. 19, 21 ¶4 (App. 2016), citing *Birchfield v. North Dakota*, 136 S.Ct. 2160, 2184 (2016). Diaz's breath test results were admissible under the Fourth Amendment because the lawfulness of her arrest was uncontested, and the Arizona Constitution provides her no greater protection than the U.S. Constitution from warrantless breath tests.
2. Arizona's implied consent statute, A.R.S. § 28-1321, requires a violator's agreement to testing to be "voluntary" to comply with state law. The court said if consent is not voluntary, the officer has not secured a statutorily required pre-condition to conduct testing, and the officer has taken a breath sample unlawfully.
3. Applying the *Valenzuela II* standard to the arresting officer's conduct, the court of appeals concluded that he obtained Diaz's voluntary agreement/consent to conduct the breath test.
4. Recognizing that it had found only a *statutory violation*, the court of appeals needed to construe the statutory requirement of "agreement" in the context of the whole statutory scheme. Here, the court found that the officer accurately informed Diaz of state law requirements. It said state law provides that a violator who operates a motor vehicle in Arizona and is arrested for DUI already consents to testing under penalty of administrative sanctions (like license suspension) for refusing to submit.
5. *Valenzuela II* did not mandate a procedure in which an arresting officer must first ask for consent to testing, and be refused, before advising the violator of the consequences of a refusal.

6. Diaz presented no other facts that would render her agreement to submit to testing involuntary beyond those inherent in any other encounter with law enforcement. It denied special action relief to Diaz because the breath test results were admissible, and the superior court properly granted relief to the State, though not for the reasons stated by the court of appeals. The court of appeals did not discuss the application of the good-faith exception because it found Diaz's consent was voluntary.

ISSUES:

In Diaz's Petition for Review

“Did the Court of Appeals (hereafter ‘COA’) err in its statutory construction and legal analysis of A.R.S. § 28-1321, thereby allowing the State to avoid the burden of proving that consent is obtained voluntarily?”

In the State's Cross-Petition for Review

“Whether A.R.S. § 28-1321 requires ‘voluntary’ agreement/refusal to submit to breath tests and whether fulfillment of that requirement is necessary in order for the breath tests to be admissible in a criminal prosecution for DUI under A.R.S. § 28-1381, thus preventing the admissibility of DUI breath tests as searches incident to arrest pursuant to *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016) and *State v. Navarro*, 241 Ariz. 19 (Ct. App. 2016).”

The State also presents an issue “presented to, but not decided by” the appeals court:

“Whether the exclusionary rule applicable in cases of constitutional violations can apply to a statutory violation of A.R.S. § 28-1321 so as to prevent the admission of DUI breath tests in a criminal DUI prosecution under A.R.S. § 28-1381 and, even if it can, whether the statutory good-faith exception in A.R.S. § 13-3925 nonetheless applies to allow admission of the breath tests.”

Definitions:

The exclusionary rule applicable in cases of constitutional violations allows suppression of evidence obtained in violation of the Fourth Amendment to deter future violations.

The judicially-recognized good-faith exception to the rule provides that, when law enforcement officers act with an objectively reasonable good faith belief that their conduct is lawful, deterrence is unnecessary, and the exclusionary rule does not apply.

Arizona's statutory good-faith exception, A.R.S. § 13-3925(B), similarly provides:

If a party in a criminal proceeding seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the

proponent of the evidence may urge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if otherwise admissible.

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